



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2016-0424; FRL-9953-92-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; South Dakota; Revisions to the Permitting Rules

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve State Implementation Plan (SIP) revisions submitted by the State of South Dakota on October 23, 2015 and July 29, 2013 related to South Dakota's Air Pollution Control Program. The October 23, 2015 submittal revises certain definitions and dates of incorporation by reference and contains new, amended and renumbered rules. In this rulemaking, we are taking final action on all portions of the October 23, 2015 submittal, except for those portions of the submittal which do not belong in the SIP. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2016-0424. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through

<http://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air Program, U.S.

Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6227, leone.kevin@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What is the EPA Approving?

The EPA is approving all revisions as submitted by the State of South Dakota on October 23, 2015, with the exception of the revisions that we are not acting on, as outlined in section III of our proposed rulemaking published on August 8, 2016 (81 FR 52388). We are taking final action to approve the following revisions: (1) *74:36:01:01 (Definitions)* - 74:36:01:01(8), 74:36:01:01(29), 74:36:01:01(67), 74:36:01:01(73), 74:36:01:05, and 74:36:01:20 ; *74:36:02 (Ambient Air Quality)* - 74:36:02:02, 74:36:02:03, 74:36:02:04 and 74:36:02:05; *74:36:03 (Air Quality Episodes)* - 74:36:03:01 and 74:36:03:02; *74:36:04 (Operating Permits for Minor Sources)* - 74:36:04:04, 74:36:04:03 and 74:36:04:21.01; *74:36:09 (Prevention of Significant Deterioration)* - 74:36:09:02, 74:36:09:03, 74:36:09:02(7), 74:36:09:02(8) and 74:36:09:02(9); *74:36:10 (New Source Review)* - 74:36:10:02, 74:36:10:03.01, 74:36:10:05, 74:36:10:07 and 74:36:10:08; *74:36:11 (Performance Testing)* - 74:36:11:01; *74:36:12 (Control of Visible Emissions)* - 74:36:12:01 and 74:36:12:03; *74:36:18 (Regulations for State Facilities in the Rapid City Area)* - 74:36:18:10; *74:36:20 (Construction Permits for New Sources or Modifications)* - 74:36:20:05; *74:36:01:01(73) (Subject to Regulation)*; and the deletion of *74:36:04:03.01 (Minor Source Operating Permit Variance)*.

We provided a detailed explanation of the bases for our proposal. See 81 FR 52388. We invited comment on all aspects of our proposal and provided a 30-day comment period. The comment period ended on September 8, 2016.

In this action, we are responding to the comments we received and taking final rulemaking action on the rules from the State's July 29, 2013 and October 23, 2015, submittals.

II. Brief Discussion of Statutory and Regulatory Requirements

The changes we are taking final action to approve are consistent with the CAA and EPA regulations. Specifically:

1. CAA section 110(a)(2)(C), requires each state plan to include "a program to provide for the... regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that the National Ambient Air Quality Standards [NAAQS] are achieved, including a permit program as required in parts C and D of this subchapter."
2. CAA section 165, lays out the requirements for obtaining a permit that must be included in a state's SIP-approved permit program. South Dakota's Air Pollution Control Program imposes these requirements on sources, and the State's proposed plan clearly satisfies the requirements of these statutory provisions.
3. CAA section 110(a)(2)(A), requires that SIPs contain enforceable emissions limitations and other control measures. Under section CAA section 110(a)(2), the enforceability requirement in section 110(a)(2)(A) applies to all plans submitted by a state. Chapter 6, section 13 creates enforceable obligations for sources by removing phrases such as "the plan shall provide" and "the plan may provide."
4. CAA section 110(i), (with certain limited exceptions) prohibits states from modifying SIP

1. requirements for stationary sources except through the SIP revision process. By eliminating unspecified procedures that were referenced in the May 10, 2011 submittal, the November 6, 2015 submittal addresses this issue.

In addition, the CAA (section 110(a)(2)(C)) and 40 CFR 51.160 require states to have legally enforceable procedures to prevent construction or modification of a source if it would violate any SIP control strategies or interfere with attainment or maintenance of the NAAQS. Such minor New Source Review (NSR) programs are for pollutants from stationary sources that do not require prevention of significant deterioration (PSD) or nonattainment NSR permits. States may customize the requirements of the minor NSR program as long as their program meets minimum requirements.

Section 110(l) of the CAA states: “[e]ach revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this chapter.”

The states' obligation to comply with each of the NAAQS is considered as “any applicable requirement(s) concerning attainment.” A demonstration is necessary to show that this SIP revision will not interfere with attainment or maintenance of the NAAQS, including those for ozone, particulate matter, carbon monoxide (CO), sulfur dioxide (SO₂), lead, nitrogen oxides (NO_x) or any other requirement of the Act. South Dakota’s demonstration of noninterference (see docket), provides sufficient basis that new revisions to ARSD 74:36 will not interfere with attainment, reasonable further progress (RFP), or any other applicable requirement of the CAA.

Further details can be found in our proposed rulemaking.

III. Response to Comments

We received one comment during the public comment period. This comment was not related to the EPA's proposed rulemaking for South Dakota's permitting program changes which was published on August 8, 2016. As such, we are not providing a response to this comment.

IV. Final Action

As outlined in our proposed rulemaking, the EPA finds that the addition of new, revised and removed rules to ARSD 74:36 will not interfere with attainment or maintenance of any of the NAAQS in the State of South Dakota and will not interfere with any other applicable requirement of the Act or the EPA regulations as outlined in section II of this rulemaking (see proposed rulemaking for detailed rationale); and thus, are approvable under CAA section 110(l). Therefore, we are taking final action to approve South Dakota's revisions as submitted on October 23, 2015. We are not taking action on South Dakota's July 29, 2013 submittal because it was superseded.

In our final rule published in the Federal Register on February 16, 2016 (81 FR 7706) we inadvertently used an incorrect approval date in the updates to the South Dakota regulatory table. The EPA is taking final action to correct this error with this action. The IBR material for our February 16, 2016 action is contained within this docket.

V. Incorporation by Reference

In this rule, the EPA is taking final action to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is taking final action to incorporate by reference the Administrative Rules of South Dakota

pertaining to their permitting rules as outlined in section I. The EPA has made, and will continue to make, these documents generally available electronically through <http://www.regulations.gov> and/or at the EPA Region 8 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the

U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile Organic Compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 26, 2016.

Richard D. Buhl,
Acting Regional Administrator,
Region 8.

40 CFR part 52 is amended as follows:

PART 52-APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart QQ—South Dakota

2. In §52.2170, the table in paragraph (c) is amended by revising entries

“74:36:01:01”, “74:36:01:05”, “74:36:01:10”, “74:36:01:20”; “74:36:02:02”,
 “74:36:02:03”, “74:36:02:04”, “74:36:02:05”; “74:36:03:01”, “74:36:03:02”;
 “74:36:04:03”, “74:36:04:04”, “74:36:04:21”; “74:36:09:02”, “74:36:09:03”;
 “74:36:10:02”, “74:36:10:03.01”, “74:36:10:05” “74:36:10:06” “74:36:10:07”
 “74:36:10:08”; “74:36:11:01”; “74:36:12:01”, “74:36:12:03”; “74:36:13:02”,
 “74:36:13:03”, “74:36:13:04”, “74:36:13:06”, “74:36:13:07”, “74:36:13:08”;
 “74:36:18:10”; “74:36:20:02”, “74:36:20:05”; “74:36:21:02”, “74:36:21:04”,
 “74:36:21:05”, and “74:36:21:09” to read as follows:

§52.2170 Identification of plan.

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(c) * * *

Rule No.	Rule title	State effective date	EPA effective date	Final rule citation, date	Comments
* * * * *					
74:36:01. Definitions					

74:36:01:01	Definitions	10/13/2015	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	Except for 74:36:01:01. (73).
* * * * *					
74:36:01:05	Applicable requirements of the Clean Air Act defined	10/13/2015	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
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74:36:01:10	Modification defined	10/13/2015	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
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74:36:01:20	Physical change in or change in the method of operation defined	10/13/2015	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	

74:36:02. Ambient Air Quality					

74:36:02:02	Ambient air quality standards	10/13/2015	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
74:36:02:03	Methods of sampling and analysis	10/13/2015	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
74:36:02:04	Ambient air monitoring network	10/13/2015	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the	

				Federal Register]	
74:36:02:05	Air quality monitoring requirements	10/13/2015	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
74:36:03. Air Quality Episodes					
74:36:03:01	Air pollution emergency episode		[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
74:36:03:02	Episode emergency contingency plan		[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
74:36:04. Operating Permits for Minor Sources					
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74:36:04:03	Emission unit exemptions	10/13/2015	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication	

				in the Federal Register]	
74:36:04:04	Standard for issuance of a minor source operating permit	10/13/2015	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
* * * * *					
74:36:04:21	Permit modifications	10/13/2015	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
* * * * *					
74:36:09. Prevention of Significant Deterioration					
* * * * *					
74:36:09:02	Prevention of significant deterioration		[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	Except for 74:36:09:02. (10).
74:36:09:03	Public participation		[Insert date 30 days after date of publication in the	[Insert Federal Register citation], [Insert date	

			Federal Register]	of publication in the Federal Register]	
74:36:10. New Source Review					
* * * * *					
74:36:10:02	Definitions		[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
74:36:10:03 .01	New source review preconstruction permit required		[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
74:36:10:05	New source review preconstruction permit		[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
74:36:10:06	Causing or contributing to a violation of any national ambient air quality		[Insert date 30 days after date of publication in the	[Insert Federal Register citation], [Insert date	

	standard		Federal Register]	of publication in the Federal Register]	
74:36:10:07	Determining credit for emission offsets		[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
74:36:10:08	Projected actual emissions		[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
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74:36:11. Performance Testing					
74:36:11:01	Stack performance testing or other testing methods	10/13/2015	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
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74:36:12. Control of Visible Emissions					
* * * * *					
74:36:12:01	Restrictions on	10/13/2015	[Insert date	[Insert	

	visible emissions		30 days after date of publication in the Federal Register]	Federal Register citation], [Insert date of publication in the Federal Register]	
* * * * *					
74:36:12:03	Exceptions granted to alfalfa pelletizers or dehydrators	10/13/2015	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
74:36:13. Continuous Emission Monitoring Systems					
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74:36:13:02	Minimum performance specifications for all continuous emission monitoring systems	10/13/2015	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
74:36:13:03	Reporting requirements	10/13/2015	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	

74:36:13:04	Notice to department of exceedance	10/13/2015	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	

74:36:13:06	Compliance certification	10/13/2015	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
74:36:13:07	Credible evidence	10/13/2015	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
74:36:13:08	Compliance assurance monitoring	10/13/2015	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	

74:36:18. Regulations for State Facilities in the Rapid City Area					

74:36:18:10	Visible emission limit for construction and continuous operation activities	10/13/2015	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	

74:36:20. Construction Permits for New Sources or Modifications					

74:36:20:02	Construction permit required	10/13/2015	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	

74:36:20:05	Standard for issuance of construction permit	10/13/2015	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	

74:36:21. Regional Haze Program					

74:36:21:02	Definitions	10/13/2015	[Insert date 30 days after date of	[Insert Federal Register	

			publication in the Federal Register]	citation], [Insert date of publication in the Federal Register]	
* * * * *					
74:36:21:04	Visibility impact analysis	10/13/2015	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
74:36:21:05	BART determination	10/13/2015	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
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74:36:21:09	Monitoring, recordkeeping, and reporting	10/13/2015	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
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[FR Doc. 2016-24648 Filed: 10/12/2016 8:45 am; Publication Date: 10/13/2016]